AMENDMENT TO H.R.

OFFERED BY MR. STEARNS

(Amendment to "Beneficiary Improvement and Protection Act of 2000")

Add at the end the following new division (and designate the preceding provisions as division A):

DIVISION B—MEDICARE BILLING AND EDUCATION ACT

SEC 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the ''Medicare Billing and Education Act of 2000''.

(b) TABLE OF CONTENTS.—The table of contents of this division is as follows:

SEC. 1002. FINDINGS.

Congress finds the following:

(1) Physicians, providers of services, and suppliers of medical equipment and supplies that participate in the medicare program under title XVIII of the Social Security Act must contend with over 100,000 pages of complex medicare regulations, most of which are unknowable to the average health care provider.

(2) Many physicians are choosing to discontinue participation in the medicare program to avoid becoming the target of an overzealous Government investigation regarding compliance with the extensive regulations governing the submission and payment of medicare claims.

(3) Health Care Financing Administration contractors send post-payment review letters to physicians that require the physician to submit to additional substantial Government interference with the practice of the physician in order to preserve the physician's right to due process.

(4) When a Health Care Financing Administration contractor sends a post-payment review letter to a physician, that contractor often has no telephone

or face-to-face communication with the physician, provider of services, or supplier.

(5) The Health Care Financing Administration targets billing errors as though health care providers have committed fraudulent acts, but has not adequately educated physicians, providers of services, and suppliers regarding medicare billing requirements.

(6) The Office of the Inspector General of the Department of Health and Human Services found that 75 percent of surveyed physicians had never received any educational materials from a Health Care Financing Administration contractor concerning the equipment and supply ordering process.

SEC. 1003. DEFINITIONS.

In this division:

(1) APPLICABLE AUTHORITY.—The term ''applicable authority'' has the meaning given such term in section 1861(uu)(1) of the Social Security Act (as added by section 202).

(2) CARRIER.—The term ''carrier'' means a carrier (as defined in section 1842(f) of the Social Security Act (42 U.S.C. 1395u(f))) with a contract under title XVIII of such Act to administer benefits under part B of such title.

(3) EXTRAPOLATION.—The term ''extrapolation'' has the meaning given such term in section 1861(uu)(2) of the Social Security Act (as added by section 202).

(4) FISCAL INTERMEDIARY.—The term ''fiscal intermediary'' means a fiscal intermediary (as defined in section 1816(a) of the Social Security Act (42 U.S.C. 1395h(a))) with an agreement under section 1816 of such Act to administer benefits under part A or B of such title.

(5) HEALTH CARE PROVIDER.—The term ''health care provider'' has the meaning given the term ''eligible provider'' in section 1897(a)(2) of the Social Security Act (as added by section 301).

(6) MEDICARE PROGRAM.—The term ''medicare program'' means the health benefits program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) PREPAYMENT REVIEW.—The term ''prepayment review'' has the meaning given such term in section 1861(uu)(3) of the Social Security Act (as added by section 202).

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

TITLE I—REGULATORY REFORM

SEC. 1101. PROSPECTIVE APPLICATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—Section 1871(a) of the Social Security Act (42 U.S.C. 1395hh(a)) is amended by adding at the end the following new paragraph:

''(3) Any regulation described under paragraph (2) may not take effect earlier than the date on which such regulation becomes a final regulation. Any regulation described under such paragraph that applies to an agency action, including any agency determination, shall only apply as that regulation is in effect at the time that agency action is taken.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 1102. REQUIREMENTS FOR JUDICIAL AND REGULATORY CHALLENGES OF REGULATIONS.

(a) RIGHT TO CHALLENGE CONSTITUTIONALITY AND STATUTORY AUTHORITY OF HCFA REGULATIONS.—Section 1872 of the Social Security Act (42 U.S.C. 1395ii) is amended to read as follows:

''APPLICATION OF CERTAIN PROVISIONS OF TITLE II

''SEC. 1872. The provisions of sections 206 and 216(j), and of subsections (a), (d), (e), (h), (i), (j), (k),

and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II, except that—

''(1) in applying such provisions with respect to this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively; and

''(2) section 205(h) shall not apply with respect to any action brought against the Secretary under section 1331 or 1346 of title 28, United States Code, regardless of whether such action is unrelated to a specific determination of the Secretary, that challenges—

''(A) the constitutionality of the Secretary's regulations or policies;

''(B) the Secretary's statutory authority to promulgate such regulations or policies; or

''(C) a finding of good cause under subparagraph (B) of the sentence following section 553(b)(3), United States Code.''.

(b) CONSTRUCTION OF HEARING RIGHTS RELATING TO DETERMINATIONS BY THE SECRETARY REGARDING AGREEMENTS WITH PROVIDERS OF SERVICES.—Section

1866(h) of the Social Security Act (42 U.S.C. 1395cc(h)) is amended by adding at the end the following new paragraph:

''(3) For purposes of applying paragraph (1), an institution or agency dissatisfied with a determination by the Secretary described in such paragraph shall be entitled to a hearing thereon regardless of whether—

''(A) such determination has been made by the Secretary or by a State pursuant to an agreement entered into with the Secretary under section 1864; or

''(B) the Secretary has imposed or may impose a remedy, penalty, or other sanction on the institution or agency in connection with such determination.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 1103. PROHIBITION OF RECOVERING PAST OVERPAYMENTS BY CERTAIN MEANS.

(a) IN GENERAL.—Except as provided in subsection (b) and notwithstanding sections 1815(a), 1842(b), and 1861(v)(1)(A)(ii) of the Social Security Act (42 U.S.C. 1395g(a), 1395u(a), and 1395x(v)(1)(A)(ii)), or any other provision of law, for purposes of applying sections

1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of such Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not offset any future payment to a health care provider to recoup a previously made overpayment, but instead shall establish a repayment plan to recoup such an overpayment.

(b) EXCEPTION.—This section shall not apply to cases in which the Secretary finds clear and convincing evidence of fraud or similar fault on the part of such provider.

SEC. 1104. PROHIBITION OF RECOVERING PAST OVERPAYMENTS IF APPEAL PENDING.

Notwithstanding any provision of law, for purposes of applying sections 1842(b)(3)(B)(ii), 1866(a)(1)(B)(ii), 1870, and 1893 of the Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii), 1395cc(a)(1)(B)(ii), 1395gg, and 1395ddd), the Secretary may not take any action (or authorize any other person, including any fiscal intermediary, carrier, and contractor under section 1893 of such Act (42 U.S.C. 1395ddd)) to recoup an overpayment during the period in which a health care provider is appealing a determination that such an overpayment has been made or the amount of the overpayment.

TITLE II—APPEALS PROCESS REFORMS

SEC. 1201. REFORM OF POST-PAYMENT AUDIT PROCESS.

(a) COMMUNICATIONS TO PHYSICIANS.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

''(u) In carrying out its contract under subsection (b)(3), with respect to physicians' services, the carrier shall provide for the recoupment of overpayments in the following manner:

''(1)(A) During the 1-year period beginning on the date on which a physician receives an overpayment, the physician may return the overpayment to the carrier making such overpayment if—

''(i) the carrier or a contractor under section 1893 has not requested any relevant record or file; and

''(ii) the case has not been referred to the Department of Justice or the Office of Inspector General.

''(B) If a physician returns an overpayment under subparagraph (A), neither the carrier, contractor under section 1893, nor any law enforcement agency may begin an investigation or target such

physician based on any claim associated with the amount the physician has repaid.

''(2) If a carrier or a contractor under section 1893 identifies (before or during post-payment review activities) that a physician has submitted a claim with a coding, documentation, or billing inconsistency, before sending any written communication to such physician, the carrier or a contractor under section 1893 shall contact the physician by telephone or in person at the physician's place of business during regular business hours and shall—

''(A) identify the billing anomaly;

''(B) inform the physician of how to address the anomaly; and

''(C) describe the type of coding or documentation that is required for the claim.

''(3) The carrier or a contractor under section 1893 may not recoup or offset payment amounts based on extrapolation (as defined in section 1861(uu)(2)) if the physician has not been the subject of a post-payment audit.

''(4) As part of any written consent settlement communication, the carrier or a contractor under section 1893 shall clearly state that the physician may submit additional information (including evi-

dence other than medical records) to dispute the overpayment amount without waiving any administrative remedy or right to appeal the amount of the overpayment.

''(5) As part of the administrative appeals process for any amount in controversy, a physician may directly appeal any adverse determination of the carrier or a contractor under section 1893 to an administrative law judge.

''(6)(A) Each consent settlement communication from the carrier or a contractor under section 1893 shall clearly state that prepayment review (as defined in section 1861(uu)(3)) may be imposed where the physician submits an actual or projected repayment to the carrier or a contractor under section 1893. Any prepayment review shall cease if the physician demonstrates to the carrier that the physician has properly submitted clean claims (as defined in section 1816(c)(2)(B)(i)).

''(B) Prepayment review may not be applied as a result of an action under section 201(a), 301(b), or 302.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 1202. DEFINITIONS RELATING TO PROTECTIONS FOR PHYSICIANS, SUPPLIERS, AND PROVIDERS OF SERVICES.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new subsection:

''Definitions Relating to Protections for Physicians, Suppliers, and Providers of Services

''(uu) For purposes of provisions of this title relating to protections for physicians, suppliers of medical equipment and supplies, and providers of services:

''(1) APPLICABLE AUTHORITY.—The term 'applicable authority' means the carrier, contractor under section 1893, or fiscal intermediary that is responsible for making any determination regarding a payment for any item or service under the medicare program under this title.

''(2) EXTRAPOLATION.—The term 'extrapolation' means the application of an overpayment dollar amount to a larger grouping of physician claims than those in the audited sample to calculate a projected overpayment figure.

''(3) PREPAYMENT REVIEW.—The term 'prepayment review' means the carriers' and fiscal intermediaries' practice of withholding claim reimbursements from eligible providers even if the claims have

been properly submitted and reflect medical services provided.''.

SEC. 1203. RIGHT TO APPEAL ON BEHALF OF DECEASED BENEFICIARIES.

Notwithstanding section 1870 of the Social Security Act (42 U.S.C. 1395gg) or any other provision of law, the Secretary shall permit any health care provider to appeal any determination of the Secretary under the medicare program on behalf of a deceased beneficiary where no substitute party is available.

TITLE III—EDUCATION COMPONENTS

SEC. 1301. DESIGNATED FUNDING LEVELS FOR PROVIDER EDUCATION.

(a) EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND SUPPLIERS.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''EDUCATION PROGRAMS FOR PHYSICIANS, PROVIDERS OF SERVICES, AND SUPPLIERS

''SEC. 1897. (a) DEFINITIONS.—In this section:

''(1) EDUCATION PROGRAMS.—The term 'education programs' means programs undertaken in conjunction with State and local medical societies and specialty societies that focus on current billing, coding, and documentation laws, regulations, and

carrier manual instructions and that place special emphasis on billing, coding, and documentation errors that the Secretary has found occur with the highest frequency and remedies for these improper billing, coding, and documentation practices.

''(2) ELIGIBLE PROVIDERS.—The term 'eligible provider' means a physician (as defined in section 1861(r)), a provider of services (as defined in section 1861(u)), or a supplier of medical equipment and supplies (as defined in section 1834(j)(5)).

''(b) CONDUCT OF EDUCATION PROGRAMS.—

''(1) IN GENERAL.—Carriers and fiscal intermediaries shall conduct education programs for any eligible provider that submits a claim under paragraph (2)(A).

''(2) ELIGIBLE PROVIDER EDUCATION.—

''(A) SUBMISSION OF CLAIMS AND RECORDS.—Any eligible provider may voluntarily submit any present or prior claim or medical record to the applicable authority (as defined in section 1861(uu)(1)) to determine whether the billing, coding, and documentation associated with the claim is appropriate.

''(B) PROHIBITION OF EXTRAPOLATION.—No claim submitted under subparagraph (A) is

subject to any type of extrapolation (as defined in section 1861(uu)(2)).

''(c) SAFE HARBOR.—No submission of a claim or record under this section shall result in the carrier, a contractor under section 1893, or any law enforcement agency beginning an investigation or targeting an investigation based on any claim or record submitted under such subparagraph.

''(3) TREATMENT OF IMPROPER CLAIMS.—If the carrier or fiscal intermediary finds a claim to be improper, the eligible provider shall have the following options:

''(A) CORRECTION OF PROBLEMS.—To correct the documentation, coding, or billing problem to appropriately substantiate the claim and either—

''(i) remit the actual overpayment; or

''(ii) receive the appropriate additional payment from the carrier or fiscal intermediary.

''(B) REPAYMENT.—To repay the actual overpayment amount if the service was not covered under the medicare program under this title or if adequate documentation does not exist.

"(4) PROHIBITION OF ELIGIBLE PROVIDER TRACKING.—The applicable authorities may not use the record of attendance of any eligible provider at an education program conducted under this section or the inquiry regarding claims under paragraph (2)(A) to select, identify, or track such eligible provider for the purpose of conducting any type of audit or prepayment review.".

(b) FUNDING OF EDUCATION PROGRAMS.—

(1) MEDICARE INTEGRITY PROGRAM.—Section 1893(b)(4) of the Social Security Act (42 U.S.C. 1395ddd(b)(4)) is amended by adding at the end the following new sentence: "No less than 10 percent of the program funds shall be devoted to the education programs for eligible providers under section 1897.".

(2) CARRIERS.—Section 1842(b)(3)(H) of the Social Security Act (42 U.S.C. 1395u(b)(3)(H)) is amended by adding at the end the following new clause:

"(iii) No less than 2 percent of carrier funds shall be devoted to the education programs for eligible providers under section 1897.".

(3) FISCAL INTERMEDIARIES.—Section 1816(b)(1) of the Social Security Act (42 U.S.C. 1395h(b)(1)) is amended—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) in subparagraph (B), by striking ''; and'' and inserting a comma; and

(C) by adding at the end the following new subparagraph:

''(C) that such agency or organization is using no less than 1 percent of its funding for education programs for eligible providers under section 1897.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

SEC. 1302. ADVISORY OPINIONS.

(a) STRAIGHT ANSWERS.—Fiscal intermediaries and carriers shall do their utmost to provide health care providers with one, straight and correct answer regarding billing and cost reporting questions under the medicare program, and will, when requested, give their true first and last names to providers.

(b) WRITTEN REQUESTS.—

(1) IN GENERAL.—The Secretary shall establish a process under which a health care provider may request, in writing from a fiscal intermediary or carrier, assistance in addressing questionable coverage, billing, documentation, coding and cost reporting procedures under the medicare program and then the fiscal intermediary or carrier shall respond in writing within 30 business days with the correct billing or procedural answer.

(2) USE OF WRITTEN STATEMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), a written statement under paragraph (1) may be used as proof against a future audit or overpayment under the medicare program.

(B) EXTRAPOLATION PROHIBITION.—Subject to subparagraph (C), no claim submitted under this section shall be subject to extrapolation.

(C) LIMITATION ON APPLICATION.—Subparagraphs (A) and (B) shall not apply to cases of fraudulent billing.

(3) SAFE HARBOR.—If a physician requests an advisory opinion under this subsection, neither the fiscal intermediary, the carrier, a contractor under

section 1893 of the Social Security Act (42 U.S.C. 1395ddd), nor any law enforcement agency may begin an investigation or target such physician based on any claim cited in the request.

TITLE IV—SUSTAINABLE GROWTH RATE REFORMS

SEC. 1401. INCLUSION OF REGULATORY COSTS IN THE CALCULATION OF THE SUSTAINABLE GROWTH RATE.

(a) IN GENERAL.—Section 1848(f)(2) of the Social Security Act (42 U.S.C. 1395w–4(f)(2)) is amended—

(1) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively;

(2) by striking ''SPECIFICATION OF GROWTH RATE.—The sustainable growth rate'' and inserting ''SPECIFICATION OF GROWTH RATE.—

''(A) IN GENERAL.—The sustainable growth rate''; and

(3) by adding at the end the following new subparagraphs:

''(B) INCLUSION OF SGR REGULATORY COSTS.—The Secretary shall include in the estimate established under clause (iv)—

''(i) the costs for each physicians' service resulting from any regulation im-

plemented by the Secretary during the year for which the sustainable growth rate is estimated, including those regulations that may be implemented during such year; and

"(ii) the costs described in subparagraph (C).

"(C) INCLUSION OF OTHER REGULATORY COSTS.—The costs described in this subparagraph are any per procedure costs incurred by each physicians' practice in complying with each regulation promulgated by the Secretary, regardless of whether such regulation affects the fee schedule established under subsection (b)(1).

"(D) INCLUSION OF COSTS IN REGULATORY IMPACT ANALYSES.—With respect to any regulation promulgated on or after January 1, 2001, that may impose a regulatory cost described in subparagraph (B)(i) or (C) on a physician, the Secretary shall include in the regulatory impact analysis accompanying such regulation an estimate of any such cost.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any estimate

made by the Secretary of Health and Human Services on or after the date of enactment of this Act.

TITLE V—STUDIES AND REPORTS

SEC. 1501. GAO AUDIT AND REPORT ON COMPLIANCE WITH CERTAIN STATUTORY ADMINISTRATIVE PROCEDURE REQUIREMENTS.

(a) AUDIT.—The Comptroller General of the United States shall conduct an audit of the compliance of the Health Care Financing Administration and all regulations promulgated by the Department of Health and Human Resources under statutes administered by the Health Care Financing Administration with—

(1) the provisions of such statutes;

(2) subchapter II of chapter 5 of title 5, United States Code (including section 553 of such title); and

(3) chapter 6 of title 5, United States Code.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the audit conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.

SEC. 1502. GAO STUDY AND REPORT ON PROVIDER PARTICIPATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on provider participation in the medicare program to determine whether policies or enforcement efforts against health care providers have reduced access to care for medicare beneficiaries. Such study shall include a determination of the total cost to physician practices of compliance with medicare laws and regulations, the number of physician audits, the actual overpayments assessed in consent settlements, and the attendant projected overpayments communicated to physicians as part of the consent settlement process.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General determines appropriate.